

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

DAVID E. PAYNE

PLAINTIFF

v.

CAUSE NO. 3:11-CV-389-CWR-FKB

AMERICAN CORRECTIONAL ASSOCIATION, ET AL.

DEFENDANTS

ORDER

Before the Court are the plaintiff's motion for injunctive relief, the Magistrate Judge's Report and Recommendation on that motion, and the plaintiff's objection to the Report and Recommendation. Docket Nos. 38, 52, 56. After considering the pleadings and applicable law, the objection will be overruled, the Report and Recommendation will be adopted, and the motion for injunctive relief will be denied.

I. Background

David E. Payne is an inmate held in the custody of the Mississippi Department of Corrections. Docket No. 8. In June 2011, he filed a complaint alleging that a variety of defendants had violated his rights under the Americans with Disabilities Act, various Amendments to the United State Constitution, the Constitution of the State of Mississippi, and several other federal and state statutes. Docket No. 1. The substance of his complaint regarded the conditions of his confinement. Docket No. 8.

II. Discussion

In April 2012, Payne moved for a temporary restraining order or a preliminary injunction asking the Court to halt the animosity, retaliation, extortion, and other harms he allegedly experiences at the hands of the Mississippi Department of Corrections, and then place him into the witness protection program. Docket No. 38, at 1-3. He also sought, among several other things, a decision on his requests for conditional medical release and an Order protecting his legal records and legal mail. *Id.* at 2-4. The Magistrate Judge found that Payne's motion met none of the four requirements for injunctive relief, then recommended that the motion be denied. Docket No. 52.

After successfully requesting an extension of time to object, Payne filed his objection to the Magistrate Judge's findings. Docket No. 56. He argues that the Magistrate Judge and other judicial officers have committed misconduct and conspired to deprive him of his rights, because he has in

fact proven all four elements required for injunctive relief. *Id.* at 1-3. Payne next contends that the Magistrate Judge erred by entering a Report and Recommendation without the benefit of a response from the defendants. *Id.* at 3. He closes by charging an array of persons and institutions with a variety of unlawful acts. *Id.* at 5-6.

“A preliminary injunction is an extraordinary remedy. It should only be granted if the movant has clearly carried the burden of persuasion on all four . . . prerequisites. The decision to grant a preliminary injunction is to be treated as the exception rather than the rule.” *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985) (setting out the four elements). Under this standard, Payne has not shown that he is entitled to an injunction. *See id.* Among other reasons, the evidence is not clear, much less substantially likely, that Payne will prevail on the merits of his suit. Further, any threat to him is outweighed by the harm and cost the defendants and the public would incur by moving Payne into witness protection or granting conditional medical release.

Finally, the Magistrate Judge has not erred by issuing a Report and Recommendation without the benefit of the Department of Corrections’ response. The movant bears the burden to prove an entitlement to injunctive relief. *Id.* at 622. Payne’s motion did not meet that burden. He is not entitled to an injunction by default.

III. Conclusion

Having considered Payne’s objection, the Court finds that it should be overruled and that the Report and Recommendation should be adopted as the finding of this Court. Accordingly,

IT IS HEREBY ORDERED that the Report and Recommendation [Docket No. 52] is adopted and the plaintiff’s motion for injunctive relief [Docket No. 38] is denied.

SO ORDERED, this the 1st day of August, 2012.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE